IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

(1) WRIT PETITION NO.9744 OF 2004

Mrs.Rajashree alias Vanita
Rajesh Dixit, Age 25 yrs.
Occ: Housewife, Residing at
C/o Shri.Ganesh Kulkarni,
Shreya 'B' Block No.6,
Maniknagar Co-Op.Housing
Society, Gangapur Road,
Nashik ..Petitioner

Vs.

Shri.Rajesh Nagesh Dixit
Age 30 yrs. Occ: Service
Residing at : B-21+22
Mantri Kishor Park,
Ashok Nagar,
Near Bhosale Nagar,
Rangehills Corner,
Pune-411007 ..Respondent

....

Mr.S.B.Deshmukh for Petitioner
Mr.R.S.Apte for Respondent

....

WITH

(2) WRIT PETITION NO. 9838 OF 2004

Rajesh Nagesh Dixit
Age 31 yrs, Occ: Service,
Residing at : E21 Mantri
Kishore Park,
Range Hill Road, Pune-411007 ..Petitioner

Vs.

Mrs.Rajashree alias Vanita
Rajesh Dixit, Age 26 yrs.
Occ: Nil, Residing at,
C/o Ganesh M.Kulkarni,
Shrey 'B' Block No.6,
Manik Nagar Co.Op.Housing Socy.
Gangapur Road, Nasik. ..Respondent

....

Mr.R.S.Apte with M.R.Bubna for Petitioner

Mr.S.B.Deshmukh for Respondent

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CORAM : B.H.MARLAPALLE,J.

DATE OF RESERVING THE JUDGMENT : MARCH 24,2005

DATE OF PRONOUCING THE THE JUDGMENT : APRIL 1,2005

JUDGMENT:

1. Both these petitions challenge the order passed below Exhibit-50 in Petition No.640 of 2002 by the learned Judge of the Family Court at Pune on 6.9.2004. The first petition is filed by the wife whereas the second petitioner has been filed by the husband and hence, both of them are being decided by this common judgment and order.

2. Rule. Respondent waives service in the respective petitions. By consent, rule is taken up for final hearing forthwith.

3. The marriage of the parties was solemnised on 3.3.2002 at Pune. They returned to Pune on 18.3.2002 by cutting short their honeymoon trip on account of ill health of the wife. The husband resumed his duties on 19.3.2002 and within few days, the wife was hospitalised. She left the matrimonial home on 3.4.2002 as she wanted to go to her parents home at Nasik. The wife suffered an abortion. She returned

to the matrimonial home but within few days i.e. sometimes in the month of May, 2002 she went back to her parents home. As she did not return to the matrimonial home, the husband sent a legal notice through an advocate on 29.6.2002 and the same was replied on 18.7.2002. Under these circumstances, the husband filed P.A.No. 588 of 2002 under Section 12(1)(c) of the Hindu Marriage Act, 1955 (for short, the 'Act'), for annulment of the marriage by decree of nullity. This petition was moved on or about 3.9.2002. On receipt of the notice or thereabout, the wife filed P.A.NO. 640 of 2002 under Section 9 of the Act for restitution of conjugal rights on or about 27.9.2002 before the Family Court at Pune. In the said petition, she filed an application Exhibit-5 for interim alimony. By an order dated 31.12.2003 the same application was partly allowed and the husband was directed to pay interim maintenance of Rs.12,500/- per month from 7.1.2002. The husband filed an application below Exh.40 for review of the said order dated 31.7.2003, but it was rejected by the learned Judge of the Family Court on 7.2.2004. The husband waited for about six months and filed yet another application at Exh.50 for modification of the order dated 31.12.2003 passed below Exh.5 and by the impugned order dated 16.9.2004 the said application has been partly allowed and interim maintenance amount came to be reduced to Rs.7000/- per month from

the earlier amount of Rs.12,500/- per month.

4. The learned counsel for the wife submitted that under Order XLVII Rule 9 of C.P.C., second review application was not maintainable and therefore, the Family Court entertained the application at Exh.50 without authority in law. Once the application at Exh.40 praying for review though rejected by the order dated 7.2.2004, even otherwise on merits, there was no case to entertain another application at Exh.50 for the similar reasons. Whereas, the learned counsel for the husband submitted that there was change in circumstances from December, 2003 and after the order below Exh.5 was passed, the husband was driven to miseries by the behaviour of the wife. She approached the employer of the husband and asked for various documents as a result of which the employer got annoyed and the husband had to leave the job. He tried for another employment and before he was to be interviewed by the new employer, the wife had again approached and submitted a letter. The husband lost the second opportunity as well. Somehow, he got fresh job but on much less salary than he was getting prior to the order dated 31.12.2002. The husband remained unemployed for few months. He had to support his family consisting of elderly parents and his younger brother, the change in circumstances reduced the monthly income of the husband and

therefore, the order dated 31.12.2003 was required to be modified inspite of the fact that such a prayer was already rejected by the order dated 7.2.2004 passed below Exh.40, urged the learned counsel for the husband.

5. In the impugned order, the Family Court noted that from October, 2002 to July, 2003, the husband was unemployed. It was pointed out that from 22.9.2003, the husband was employed as I.T. specialist at a salary of Rs.14,000/- per month after being jobless for about ten months. When the order dated 31.12.2003 was passed fixing the interim maintenance at Rs.12,500/- per month, it was noted that the husband was having gross annual salary of Rs.2,64,000/- in the earlier financial year. The Family Court considered the provisions of Section 24 and observed that it has wide powers to modify, vary or suspend the order of interim maintenance if the changed circumstances so warranted so as to do justice to the parties.

6. Section 10 of the Family Courts Act, 1984 states inter alia that "the provisions of the Code of Civil Procedure and of any other law for the time being in force shall apply to the suits and proceedings other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 before a Family Court and

for the purpose of the said Provisions of the Code, a Family court shall be deemed to be a Civil Court and shall have all the powers of such Court". It further provided in Sub-section (2) that "the provisions of the Code of Criminal procedure or the rules made thereunder, shall apply to the proceedings under Chapter IX of the Code before a Family Court". Chapter IX of the Code of Criminal Procedure 1973 is regarding the orders for maintenance of wife, children and parents and it contains Sections 125 to 128. The application filed by the wife in the instant case was for interim maintenance under Section 24 of the Act and therefore, the provisions of Civil Procedure Code would be applicable to deal with the main petitions filed by the respective spouses as well as the application filed under Section 24 of the Act filed by the wife. Consequently, under Order XLVII Rule 1 and Section 144 of the Civil Procedure Code, the Family Court has power to entertain an application for review. Such an application was filed at Exhibit 40 and it was rejected by the Family Court on 30.4.2004. The application at Exh.50 was an application for alteration of the interim maintenance amount fixed at Rs.12,500/- per month by the order dated 31.12.2003 passed below Exhibit-5. Admittedly under Section 24 of the Act, there is no provision akin to Section 127 of Code of Criminal Procedure. In the case of

Smt.Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others; [AIR 1997 SC 3397], it was urged that Section 24 of the Act provides for interim maintenance to be granted only to the wife and it cannot be enlarged to consider the case of interim maintenance to be granted to the daughter etc. These submissions were overruled by the following observations:

> . "Section 24 of the Act no doubt, talks of maintenance of wife during the pendency of the proceedings but this section, in our view, cannot be read in isolation and cannot be given restricted meaning to hold that it is the maintenance of the wife alone and no one else. Since the wife is maintaining the eldest unmarried daughter, her right to claim maintenance would include her own maintenance and that of her daughter. This fact has to be kept in view while fixing the maintenance *pendente lite* for the wife".

. Thus the provisions of Section 24 cannot be given restricted meaning and if in a given case, an application is made for alteration of the interim maintenance amount already granted, such an application will have to be entertained as an application for review under Order XLVII Rule 1(1) of Civil Procedure Code or in the alternative an application under Section 127 of Code of Criminal Procedure before the Family Court. In the instant case, in the application at Exh.5, the wife had claimed that the husband was working with a Company

called Bindview Pvt.Ltd. at Pune as a Senior Technical Lead and was drawing a monthly salary of Rs.62,000/-. In the application at Exhibit-50, the husband came out with a case that he lost the said job and the subsequent job due to the acts of the wife and he remained unemployed for ten months. Thereafter, he came to be employed with S.I. Services (I) Pvt. Ltd. He joined the said company on 1.8.2004 and the Salary Certificate placed on record reflected that his gross salary was Rs.15,528/- per month with the said Company. His net pay came to Rs.14,697/- per month. When the application at Exh.40 was rejected, his employment with Vmoksha Technoligies Pvt. Ltd. on a gross salary of RS.25,454/- for December, 2003 was taken into consideration by the Family Court. Thus, the husband had made out a case for alteration of the maintenance amount on the basis of the subsequent change in employment and his monthly salary with M/s. S.I. Services (I) Pvt. Ltd. The Family Court rightly entertained the application at Exh.50 and it cannot be accepted that the order passed below Exh.50 was without jurisdiction or powers. If the circumstances change in the future in respect of either of the parties i.e. if the husband gets more salary or the wife starts earning, either of them may apply for alteration of the interim maintenance amount.

7. Now coming to the quantum of interim maintenance as fixed at Rs.7000/- per month by the impugned order dated 16.9.2004 below Exh.50, both the parties are aggrieved. The wife contends that there was no reason to reduce the amount from Rs.12,500/- to Rs.7000/-, whereas the husband contends that the interim maintenance amount was required to be reduced to Rs.2000/- per month and not Rs.7000/- per month.

8. In the case of *Amarjit Kaur Vs. Harbhajan Singh and Another; [(2003) 10 SCC 228],* the provisions of Section 24 have been interpreted in the following words:

. "Section 24 of the Hindu Marriage Act, 1955 empowers the Court in any proceeding under the Act, if it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the petitioner and the respondent"

. In the case of *Smt.Jasbir Kaur (supra)*, for fixing the interim maintenance amount, guidelines have been laid down under:

. "Court has to consider the status of

> the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and those he is obliged under the law and statutory but involuntary payments or deductions. Amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amounts fixed cannot be excessive or extortionate".

9. In the case of *Smt.Jasbir Kaur (supra),* the husband's monthly income was accepted to be Rs.20,000/-. During the span of 36 years of marriage life, the couple begot four children- two sons and two daughters. Elder daughter was 34 years old and unmarried and was living with the wife and the second child was the son and was working with a company. The third child was a daughter aged 26 years and unmarried as well as unemployed and living with the father, whereas, 4th child was a son of 20 years of age unemployed and had studied only upto 11th class. Under such circumstances, the Supreme Court fixed a maintenance pendete lite payable to the wife and the daughter with her at Rs.5000/- per month i.e. 25% of the monthly salary.

. In the instant case, admittedly, the marriage lasted for about three and half months and the couple lived together only for about one and half months at

Pune. As per the husband, even out of the period of one and half months of matrimonial life, the wife was hospitalised for most of the time. During the stay at Nasik at the house of her father she suffered a miscarriage and it was not a case of termination of pregnancy as alleged by her in the petition she has filed for restitution of conjugal rights. The wife has completed her graduation and is staying with her parents. Her father is a pensioner and has his own house. Her mother is employed presently and her younger brother is claimed to be a student. On the other hand, the husband has to support his elderly parents, his father has retired from the Police Department and the younger brother is employed and is of marriageable age. If the husband's monthly pay is taken at Rs.14,000/- as at present, the appropriate maintenance amount by taking into consideration the standard of living of the wife and the fact that she is living not in a rented home, the interim maintenance amount could be appropriately fixed at Rs.3000/- and not at Rs.7000/- as is done by the impugned order passed by the Family Court.

10. In the premises, Writ Petition No. 9744 of 2004 filed by the wife fails and the same is hereby dismissed. Rule discharged. Writ Petition No.9838 of 2004 filed by the husband is partly allowed. The impugned order passed by the Family Court below

Exhibit-50 is hereby quashed and set aside and the interim maintenance amount payable to the wife is fixed at Rs.3000/- per month with effect from 1.9.2004 and Rule is made absolute accordingly. Respective parties to bear their own costs.

[B.H.MARLAPALLE,J.]